IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 2296 OF 1997

Shri Bharat S. Sodha,
Indian Inhabitant, aged
about 45 years, occupation
Business, at present residing
at 84 Vishwas Colony,
Alkapuri Baroda - 5. ....Applicant.
(orig.accused No.3)

v/s

1. Central Bureau of Investigation
having its office at 11-A Tanna
House, Colaba, Mumbai-400005.

2. Shri V.P. Sutar, aged adult,
residing at 502/A Shath Shakti,
Complex, Dahanukar Wadi Lane
No.1 Kandivli(West), Mumbai-400067

3. Shri V.J. Jetwat, aged adult,
residing at 74 Nanubhai Desai
Road, Mumbai.

4. Shri Prakash J. Parikh,
aged adult, residing at 23
Bansali Building, Third
Panjarpol Lane, C.P. Tank,
Mumbai 400004.

5. Shri Mafatlal R. Mehta,
aged Adult, residing at
22-C Block, Ishwar Niwas,
5th floor, Sikka Nagar,
V.P. Road, Mumbai 400004.

6. Shri Harakchand N.Jain,
aged Adult, residing at 2nd
Carpenter Street, Khar Baug,
Third Floor, Room No.11,
Mumbai 400004.

7. The State of Maharashtra ....Respondents
No.1 - orig.
complainant; Nos.2
to 6 Orig. accused
Nos.1,2,4,5 and 6.

Ms. R.B. Amrolia for applicant.
Shri H.V. Mehta for respondent No.1.

Ms. M.M. Deshmukh, APP for the State.

ALONG WITH
CRIMINAL REVISION APPLICATION NO.156 OF 2000

Central Bureau of
Investigation (ACB),
Tanna House, Colaba,
Mumbai-400 039. ... Applicant
(Original Complainant)

V/s

1. Shri V.P. Suthar,
C-502/A Shalh Shakti
Complex, Dahanukar Wadi,
Lane No.1, Kandivli(W),
Mumbai - 400 067.

2. State of Maharashtra ...Respondents.

Shri H.V. Mehta for applicant.
Shri V.N. Shignapurkar for respondent No.1.
Ms. M.M. Deshmukh, APP for the State.

CORAM: V.M. KANADE, J.
DATE: 28th February, 2006

ORAL JUDGMENT:

1. Both these applications can be disposed of by a common judgment since Criminal Application No.2296 of 1997 is filed by the original accused No.3 for quashing the complaint which has been filed against him by the CBI and Criminal Application No. 156 of 2000 which has been filed by the State, challenging the order of discharge which was passed by the J.M.F.C. discharging the original accused No.1 from Special Case No.57 of 1995.

2. Brief facts which are relevant for the purpose of deciding both these applications are as under:-

3. The applicant in Criminal Application No. 2296 of 1997 is the original accused No.3 in FIR registered by CBI vide Crime No. RC 20(A)-94-BOM. Hereinafter, the applicant in Criminal Application No. 2296 of 1997 shall be referred to as "the accused No.3" and the respondent No.1 in Criminal Application No. 156 of 2000 shall be referred to as "the original accused No.1".

4. The accused No.3 was a partner of M/s Chemtech Intermediates Private Limited and the said firm was manufacturing catalysts, metallic acetates and driers. The accused No.3 placed an order for purchase of cobalt metal from M/s Ami Corporation and M/s Essar Enterprises and towards the payment of the said amount aggregating to Rs 39,79,700/- had issued four Demand Drafts from Nandesari Branch of Bank of Baroda. All these Demand Drafts were drawn on the Service Branch of the Bank of Baroda. All the Demand Drafts were crossed account payee Demand Drafts. The accused No.3 on 25/12/1992 came to know that the four Demand Drafts had been lost. He, therefore, immediately informed this fact to the Nandesari Branch of Bank of Baroda

(the issuing Bank). The Chief Manager of the Branch immediately wrote a letter to the Service Branch dated 25/12/1992 reporting the loss of four Demand Drafts and requesting the Service Branch to stop payment of the Demand Drafts as and when they were presented. A telegram was also issued on the next day informing the Service Branch that the purchaser had issued stop payment orders as the Demand Drafts were reportedly lost.

5. However, in the meantime, the Demand Drafts had already been presented on 22nd/23rd December, 1992 to the Zaveri Bazaar Branch of Bank of Baroda for crediting the amount in the third party account of M/s Laxmi Metals and Tubes. According to the complainant, the instructions issued by accused No.1 were accepted and the entire amount of Rs 39,79,700/- was withdrawn by cash by M/s Laxmi Metals and Tubes even before the realization of the Demand Drafts. Thereafter, the Demand Drafts arrived at the Service Branch for clearing. The Service Branch, therefore, returned all the four Demand Drafts to the Zaveri Bazaar Branch, unpaid and, therefore, the credit given by the Zaveri Bazaar Branch was cancelled. The accused No.3, in the meantime, after consulting the Senior Manager of Zaveri Bazaar Branch and after seeking his permission,

was allowed to represent the four Demand Drafts. They were accordingly represented on 7/1/1993 by the Zaveri Bazaar Branch and the amount was paid by the Service Branch.

6. On 30/3/1994, after a lapse of more than one year, CBI (ACB), Bombay Branch lodged FIR being RC 20(A) of 1994 Bombay against the applicant and three other accused for the offence punishable under section 120(B) read with sections 420, 467, 468, 471 of the Indian Penal Code and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988. The accused No.3 was not made as accused in the said FIR. Subsequently, the charge-sheet was filed on 13/10/1995 wherein name of the accused No.3 and accused Nos. 4 to 6 were added in the charge-sheet. The application for discharge was filed by accused No.1 who was the respondent No.1 in the Criminal Revision Application and by accused No.3 under section 227 of the Criminal Procedure Code. The application filed by the accused No.1 was allowed and he was discharged. The application filed by the accused No.3 for discharge, however, was rejected. Against the order of discharge of accused No.1, the complainant has filed Criminal Revision Application and against the order passed by the Magistrate rejecting his

application for discharge, the accused No.3 has filed Criminal Application for quashing the complaint against him.

7. I have heard the learned Counsel appearing on behalf of the accused No.3 and the learned Counsel appearing on behalf of Union of India at length. The learned Counsel appearing on behalf of the accused No.3 submitted that even if the averments made in the complaint are taken at their face value, no offence is made out against the accused No.3. She submitted that the accused No.3 was not shown as an accused in the FIR and his name was subsequently added in the charge-sheet. She submitted that the accused No.3 was in fact, a person who was aggrieved in the entire transaction. She submitted that the accused No.3 had purchased the four Demand Drafts after making payment of the entire amount to the Bank. His money was already lost and, in return, the cobalt metal was not delivered to him. Therefore, the offence of cheating was not attracted. She submitted that the submission of the learned Counsel for Union of India that the applicant wanted to encash the Demand Draft through another fictitious firm in order to evade tax liability was not even remotely established in the entire charge-sheet. She submitted that the applicant

had issued instructions for stop payment after having learnt that the Demand Drafts were lost. She submitted that if the intention was to evade the tax liability, there was no reason why the accused No.3 would ask the Bank of Baroda to stop payment.

8. The learned Counsel for Union of India, on the other hand, submitted that all these questions will be decided only after the evidence was led in trial and there was no reason to interfere with the order passed by the Magistrate rejecting the application for discharge. He relied upon the judgment of the Supreme Court in the case of Hardeo Singh Vs. State of Bihar and another reported in **(2000) 5 SCC 623**. The learned Counsel for Union of India further submitted that in respect of the order of discharge which was passed by the J.M.F.C., the said order was also liable to be set aside for the same reason.

9. In my view, submissions made by the learned Counsel appearing for the accused No.3 will have to be accepted. The facts as alleged in the complaint clearly disclose that the accused No.3 had, in fact, paid the entire amount while purchasing the four Demand Drafts. If the entire events which transpired thereafter are examined, it discloses that the accused

No.3 himself was a loser in the entire transaction as he had paid the entire amount of Rs 39,79,700/- and, in return, he did not receive the delivery of cobalt metal which was purchased by him. In such circumstances, it is difficult to understand as to how the offence under section 420 of the Indian Penal Code is committed by the accused No.3. A bare perusal of section 420 of the Indian Penal Code discloses that for the commission of the said offence it is essential that there should be two parties and that one party should suffer wrongful loss and the other should have wrongful gain. In this case, the accused No.3 has suffered wrongful loss and, in fact, the aggrieved party himself. Therefore, even in the FIR which was lodged by the CBI, the accused No.3 was not shown as an accused. There is much substance in the submissions of the learned Counsel appearing on behalf of the accused No.3 that only after the accused No.3 had filed a complaint against the Bank in the Consumer Forum, his name was added as an accused in the charge-sheet. The accused No.3 is not a public servant and, therefore, the provisions of section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act are not attracted. Further, a perusal of the FIR and the charge-sheet discloses that one of the allegations against the accused No.3 is that he

had purchased the four Demand Drafts only for the purpose of evading tax liability. It is difficult to understand as to how the tax liability could be evaded when the accused No.3 had lost the entire amount of Rs 39,79,700/- when the amount was encashed by the third party even before the Demand Drafts were realised, even though the stop payment notice was issued by the accused No.3. So far as the case of conspiracy is concerned, there is no material on record to show that the accused was aware that the two Firms viz. M/s Ami Corporation and M/s Essar Enterprises are fictitious Firms. The accused No.3 had placed the order for purchase of cobalt metal from the open market through the commission agent M/s Asian Chemical Agency. There is no material to indicate that the accused No.3 was acquainted with the accused No.6. The allegation of conspiracy also is completely thrown above-board by the fact that the accused No.3 had immediately informed the Bank to stop the payment of the four Demand Drafts. This belies the theory of conspiracy which is sought to be raised by the complainant. In my view, therefore, no case has been made out against the accused No.3 and, in fact, if the chronology of events is taken into consideration, it can be seen that the accused No.3 is the person who is aggrieved in the entire transaction.

10. In these circumstances, the accused No.3 is liable to be discharged and the complaint against him, therefore, is quashed and set aside. Criminal Application No.2296 of 1997 is, therefore, made absolute in terms of prayer clause (a) and the criminal proceeding pending before the learned Special Judge CBI(ACB) being Special Case No. 57 of 1995 is quashed as against the accused No.3. Rule is made absolute accordingly.

11. So far as the Criminal Revision Application No.156 of 2000 which is filed by the Central Bureau of Investigation is concerned, in my view, no case is made out for interfering with the order passed by the Special Judge in Misc. Application No.1167 of 1998. I have perused the impugned order. The view taken by the Special Judge is a plausible view. There is no reason, therefore, to interfere with the said order passed by the Special Judge. Criminal Revision Application No. 156 of 2000 therefore is dismissed. Rule is discharged.

12. Both the above applications are accordingly disposed of.

V.M. KANADE,J.